

# Children's Law Center of Indiana



## Adoption

11/16/17

In **Matter of Adoption of J.R.O.**, 87 N.E.3d 37 (Ind. Ct. App. 2017), an appeal from a consolidated adoption and termination of parental rights proceedings, the Court reversed the trial court's order which granted the petition to adopt Father's four-year-old child. The Court remanded for further proceedings consistent with its opinion, which might include reinstatement of the CHINS, guardianship, and/or termination of the parental rights proceedings, if appropriate. The child was born out of wedlock in December 2012 and a paternity affidavit was executed in January 2013. In November 2014, DCS removed the child from Parents due to allegations of abuse and neglect. A CHINS proceeding was initiated and Mother admitted the allegations during a hearing on November 18, 2014. On December 2, 2014, attorney Jacob Warrum entered an oral appearance for Father in the CHINS proceeding. The trial court subsequently entered a dispositional order making the child a ward of DCS. Paternal Grandparents petitioned to be appointed guardians of the child in a separate proceeding on April 6, 2015. Grandparents were represented by Mr. Warrum, and Parents signed consents to the guardianship.

In another proceeding, the child's maternal great-aunt and her wife (Adoption Petitioners) filed a petition to adopt the child on April 22, 2015. Adoption Petitioners alleged in their petition that Parents' consents to the adoption were not required. Adoption Petitioners also filed a motion requesting that the guardianship and adoption proceedings be consolidated at a guardianship hearing set for April 23, 2015. Father did not appear at the April 23, 2015 hearing because he was incarcerated. The trial court announced its intention to consolidate the CHINS, guardianship, and adoption proceedings. Adoption Petitioners' counsel served Mother with notice of the adoption petition in open court and said she had provided Mr. Warrum with Father's notice of adoption. Mr. Warrum, who represented Father in the CHINS case and Paternal Grandparents in the guardianship case, stated that he did not object to the consolidation, but did object to the filing of the adoption petition because it was against the permanency plan and would terminate parental rights. On November 24, 2015, Mr. Warrum withdrew his appearance for Father and attorney Thomas Krochta was appointed to represent Father. On June 13, 2016, DCS filed a petition for the involuntary termination of Mother's and Father's parental rights. The trial court appointed Mr. Krochta to represent Father in the termination case. Mr. Krochta entered a denial on Father's behalf. On August 25, 2016, Father was released from incarceration and participated in visitation with the child and DCS services.

On November 22, 2016, Adoption Petitioners filed a motion requesting the court to determine that Father's consent to the adoption was not required pursuant to IC 31-19-9-18. IC 31-19-9-18 provides that the consent of a person who is served with notice of an adoption petition is irrevocably implied without further court action if the person fails to file a motion to contest the

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adoption as required under IC 31-19-10 not later than thirty days after service of the notice of adoption. A consolidated hearing on the adoption and termination proceedings was held on November 23, 2016. The trial court heard argument on the consent motion, and agreed with Adoption Petitioners' counsel that Father's consent to the adoption was irrevocably implied because he did not file a written motion to contest the adoption. The court vacated the termination hearing and scheduled the final adoption hearing. The final adoption hearing was held on May 18, 2017 and the trial court granted the adoption petition, thereby effectively closing the CHINS, guardianship, and termination cases. Father appealed the adoption decree and the closure of the termination case without a final hearing. The Court consolidated Father's appeals from the adoption and termination cases.

**The Court held the trial court erred when it concluded that Father's consent to the adoption was irrevocably implied because he did not file a written motion to contest the adoption.** *Id.* at 43. The Court noted that whether Father was required to file a written motion to contest the adoption in order to preserve his ability to contest the adoption was an issue of first impression. *Id.* at 42. The Court said this issue required the Court to interpret IC 31-19-9-18, which provides in pertinent part that “[t]he consent of a person who is served with notice...to adoption is irrevocably implied without further court action if the person...fails to file a motion to contest the adoption...not later than thirty (30) days after service of notice....” Quoting *In re J.W., Jr.*, 27 N.E.3d 1185, 1189 (Ind. Ct. App. 2015), *trans. denied*, the Court explained: (1) “[s]tatutory interpretation is a question of law and is reviewed de novo, or without deference to the trial court’s interpretation”; (2) when interpreting a statute, the Court independently reviews its meaning and applies it to the facts of the case; (3) if a statute is susceptible of only one meaning, the Court will give the statute its clear and plain meaning; (4) if a statute is susceptible of multiple interpretations, “[the Court] must try to ascertain the legislature’s intent and interpret the statute so as to effectuate that intent”; (5) the Court “presume[s] the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results”; (6) the Court must consider not only what the statute says but what it does not say. *J.R.O.* at 42.

The Court first observed that a motion may be either written or oral and that oral motions may be filed (multiple citations omitted). *Id.* The Court further observed that IC 31-19-9-18 does not specifically require the filing of a written motion and that the legislature knows how to require a written motion when it wants to do so. *Id.* For examples of statutes which require written motions, the Court looked to IC 4-21.5-3-24(b) [statute on administrative default or dismissal requires party to file a *written motion*], IC 31-37-22-11(b) [statute on vacating delinquency adjudication requires trafficked child or person acting on child’s behalf to file a *written motion*], and IC 35-41-3-11(c) [statute requires defendant claiming use of justifiable force to file a *written motion*] (emphasis in opinion). *Id.* at 42-43.

The Court noted the legislature chose not to require the filing of a written motion to contest an adoption in IC 31-19-9-18, and the Court “will not read into a statute that which is not the expressed intent of the legislature.” *Allen v. Allen*, 54 N.E.3d 344, 347 (Ind. 2016). *J.R.O.* at 43. The Court also observed it has often held that where the purpose of a rule is satisfied, the Court will not elevate form over substance. *Id.* at 43. The Court held that the purpose of IC 31-19-9-18

was satisfied in this case where Adoption Petitioners' counsel served Father's counsel in the CHINS case with the notice of adoption in open court and Father's attorney promptly objected because it would terminate Father's parental rights. Id. The Court explained that "[t]o hold [Father's counsel's] oral objection did not preserve Father's right to contest the adoption of his son, which would result in termination of his parental rights, would elevate form over substance to an untenable degree." Id. The Court agreed with Father that a motion to contest an adoption need not be in writing and that the oral objection by Father's counsel was a valid motion to contest the Adoption Petitioners' adoption of the child. Id. at 39.